

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

ROBERT G. LOPEZ, an individual,

Plaintiff,

v.

**ZAZZLE, INC.,
CAFEPRESS, INC.
ETSY, INC.,
SPIRT SHOP, INC.,
MYLOCKER, L.L.C.
ROBERT HAKE,
SPREADSHIRT, INC.,
PIXELS.COM, LLC D/B/A Fine Art
America and www.fineartamerica.com,
SEAN T. BROIHIER
FASTLY, INC.,
MICROSOFT CORPORATION,
HOSTWAY CORPORATION,
SHOPIFY (USA), INC.,
GODADDY.COM, LLC,
AMAZON.COM, LLC,
FOOT LOCKER STORES, INC.,
BRAIN BUSTER ENTERPRISES, LLC,
AKAMAI TECHNOLOGIES, INC., and
ACQUIA INC.**

Defendants.

Civil Action No. 17 CV 8493 (LAP)

ETSY’S ANSWER TO PLAINTIFF’S SECOND AMENDED COMPLAINT

Defendant Etsy, Inc. (“Etsy” or “Defendant”), by and through its undersigned counsel, hereby submits its Answer to the Second Amended Complaint (“Complaint”) filed by plaintiff Robert G. Lopez (“Lopez” or “Plaintiff”). Except to the extent expressly admitted herein, Etsy denies each and every allegation of the Complaint.

NATURE OF THE ACTION

1. Paragraph 1 contains conclusions of law to which no answer is required. Etsy denies that it has infringed Plaintiff's asserted trademarks and copyright, and denies that the Complaint states any valid claims against Etsy. With respect to Plaintiff's allegations concerning other Defendants, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1, and therefore denies such allegations.

JURISDICTION AND VENUE

2. Paragraph 2 contains conclusions of law to which no answer is required. To the extent an answer is required, Etsy admits that this Court has subject matter jurisdiction.

3. Paragraph 3 contains conclusions of law to which no answer is required. To the extent an answer is required, Etsy denies that it has committed any tortious acts. Etsy does not contest personal jurisdiction for purposes of this litigation. With respect to Plaintiff's allegations concerning other Defendants, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3, and therefore denies such allegations.

4. Paragraph 4 contains conclusions of law to which no answer is required. To the extent an answer is required, Etsy denies that it has committed any tortious acts. Etsy also denies that it advertises, markets, or sells goods in this district. Etsy further denies that Plaintiff has suffered any damages as a result of Etsy's conduct. Etsy does not contest venue in this District. With respect to Plaintiff's allegations concerning other Defendants, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4, and therefore denies such allegations.

THE PARTIES

5. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore denies such allegations.

6. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6, and therefore denies such allegations.

7. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7, and therefore denies such allegations.

8. Etsy admits the allegations in Paragraph 8.

9. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9, and therefore denies such allegations.

10. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10, and therefore denies such allegations.

11. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11, and therefore denies such allegations.

12. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12, and therefore denies such allegations.

13. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13, and therefore denies such allegations.

14. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14, and therefore denies such allegations.

15. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15, and therefore denies such allegations.

16. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16, and therefore denies such allegations.

17. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17, and therefore denies such allegations.

18. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18, and therefore denies such allegations.

19. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19, and therefore denies such allegations.

20. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20, and therefore denies such allegations.

21. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21, and therefore denies such allegations.

22. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22, and therefore denies such allegations.

23. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23, and therefore denies such allegations.

24. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24, and therefore denies such allegations.

FACTS

25. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25, and therefore denies such allegations.

26. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26, and therefore denies such allegations.

27. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27, and therefore denies such allegations.

28. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28, and therefore denies such allegations.

29. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29, and therefore denies such allegations.

30. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30, and therefore denies such allegations.

31. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31, and therefore denies such allegations.

32. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32, and therefore denies such allegations.

33. Etsy denies the allegations in Paragraph 33.

34. Etsy denies the allegations in Paragraph 34.

35. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35, and therefore denies such allegations.

36. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36, and therefore denies such allegations

37. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37, and therefore denies such allegations.

38. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and therefore denies such allegations.

39. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and therefore denies such allegations.

40. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40, and therefore denies such allegations.

41. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41 and therefore denies such allegations.

42. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and therefore denies such allegations.

43. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43, and therefore denies such allegations.

44. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44, and therefore denies such allegations.

45. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45, and therefore denies such allegations.

46. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and therefore denies such allegations.

47. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47, and therefore denies such allegations.

48. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48, and therefore denies such allegations.

49. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49, and therefore denies such allegations.

50. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 50, and therefore denies such allegations.

51. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 51, and therefore denies such allegations.

52. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52, and therefore denies such allegations.

53. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 53, and therefore denies such allegations.

54. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 54, and therefore denies such allegations.

55. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 55, and therefore denies such allegations.

56. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 56, and therefore denies such allegations.

57. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 57, and therefore denies such allegations.

58. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 58, and therefore denies such allegations.

59. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 59, and therefore denies such allegations.

60. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 60, and therefore denies such allegations.

61. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 61, and therefore denies such allegations.

62. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 62, and therefore denies such allegations.

63. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 63, and therefore denies such allegations.

64. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 64, and therefore denies such allegations.

65. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 65, and therefore denies such allegations.

66. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 66, and therefore denies such allegations.

67. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 67, and therefore denies such allegations.

68. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 68, and therefore denies such allegations.

69. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 69, and therefore denies such allegations.

70. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 70, and therefore denies such allegations.

71. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 71, and therefore denies such allegations.

72. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 72, and therefore denies such allegations.

73. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 73, and therefore denies such allegations.

74. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 74, and therefore denies such allegations.

75. Etsy denies the allegations in Paragraph 75, except that it admits that it is an online platform. Etsy admits that Exhibit L appears to consist of a webpage that at least at one point existed from a shop (UrbanZoneTshirts) hosted by etsy.com, but denies that it supports Plaintiff's allegations against Etsy.

76. Etsy denies the allegations in Paragraph 76. Etsy admits that Exhibit M appears to consist of a webpage that at least at one point existed from shops hosted by etsy.com, but denies that it supports Plaintiff's allegations against Etsy.

77. Etsy denies the allegations in Paragraph 77.

78. Etsy denies the allegations in Paragraph 78.

79. Etsy denies the allegations in Paragraph 79.

80. Etsy admits that it has the ability to discontinue the accounts of Etsy users who violate the intellectual property rights of other parties upon receipt of a properly executed takedown notice, but otherwise denies the allegations in Paragraph 80.

81. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 81, and therefore denies such allegations.

82. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 82, and therefore denies such allegations.

83. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 83 and therefore denies such allegations.

84. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 84, and therefore denies such allegations.

85. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 85, and therefore denies such allegations.

86. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 86, and therefore denies such allegations.

87. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87, and therefore denies such allegations.

88. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88, and therefore denies such allegations.

89. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 89, and therefore denies such allegations.

90. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 90, and therefore denies such allegations.

91. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 91, and therefore denies such allegations.

92. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 92, and therefore denies such allegations.

93. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 93, and therefore denies such allegations.

94. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 94, and therefore denies such allegations.

95. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95, and therefore denies such allegations.

96. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 96, and therefore denies such allegations.

97. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 97, and therefore denies such allegations.

98. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 98, and therefore denies such allegations.

99. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 99, and therefore denies such allegations.

100. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 100, and therefore denies such allegations.

101. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 101, and therefore denies such allegations.

102. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 102, and therefore denies such allegations.

103. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 103, and therefore denies such allegations.

104. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 104, and therefore denies such allegations.

105. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 105, and therefore denies such allegations.

106. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 106, and therefore denies such allegations.

107. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 107, and therefore denies such allegations.

108. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 108, and therefore denies such allegations.

109. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 109, and therefore denies such allegations.

110. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 110, and therefore denies such allegations.

111. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 111, and therefore denies such allegations.

112. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 112, and therefore denies such allegations.

113. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 113, and therefore denies such allegations.

114. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 114, and therefore denies such allegations.

115. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 115, and therefore denies such allegations.

116. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 116, and therefore denies such allegations.

117. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 117, and therefore denies such allegations.

118. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 118, and therefore denies such allegations.

119. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 119, and therefore denies such allegations.

120. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 120, and therefore denies such allegations.

121. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 121, and therefore denies such allegations.

122. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 122, and therefore denies such allegations.

123. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123, and therefore denies such allegations.

124. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 124, and therefore denies such allegations.

125. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 125, and therefore denies such allegations.

126. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126, and therefore denies such allegations.

127. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127, and therefore denies such allegations.

128. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 128, and therefore denies such allegations.

129. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 129, and therefore denies such allegations.

130. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 130, and therefore denies such allegations.

131. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 131, and therefore denies such allegations.

132. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 132, and therefore denies such allegations.

133. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 133, and therefore denies such allegations.

134. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 134, and therefore denies such allegations.

135. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 135, and therefore denies such allegations.

136. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 136, and therefore denies such allegations.

137. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 137, and therefore denies such allegations.

138. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 138, and therefore denies such allegations.

139. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 139, and therefore denies such allegations.

140. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 140, and therefore denies such allegations.

141. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 141, and therefore denies such allegations.

142. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 142 and therefore denies such allegations.

143. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 143, and therefore denies such allegations.

144. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 144, and therefore denies such allegations.

145. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 145, and therefore denies such allegations.

146. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 146, and therefore denies such allegations.

147. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 147, and therefore denies such allegations.

148. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 148, and therefore denies such allegations.

149. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 149, and therefore denies such allegations.

150. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 150, and therefore denies such allegations.

151. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 151, and therefore denies such allegations.

152. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 152, and therefore denies such allegations.

153. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 153, and therefore denies such allegations.

154. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 154, and therefore denies such allegations.

155. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 155, and therefore denies such allegations.

156. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 156, and therefore denies such allegations.

157. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 157, and therefore denies such allegations.

158. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 158, and therefore denies such allegations.

159. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 159, and therefore denies such allegations.

160. Etsy denies the allegations in Paragraph 160.

161. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 161, and therefore denies such allegations.

162. Etsy denies the allegations in Paragraph 162.

163. Etsy denies the allegations in Paragraph 163.

**FIRST CAUSE OF ACTION
TRADEMARK INFRINGEMENT
(15 U.S.C. §§ 1114-1116)**

164. Etsy fully incorporates its responses to Paragraphs 1 through 163 as if fully set forth herein.

165. Etsy denies the allegations in Paragraph 165.

**SECOND CAUSE OF ACTION
UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN
(15 U.S.C. § 1125(a))**

166. Etsy fully incorporates its responses to Paragraphs 1 through 165 as if fully set forth herein.

167. Etsy denies the allegations in Paragraph 167.

168. Etsy denies the allegations in Paragraph 168.

169. Etsy denies the allegations in Paragraph 169.

170. Etsy denies the allegations in Paragraph 170.

**THIRD CAUSE OF ACTION
COMMON LAW TRADEMARK INFRINGEMENT AND UNFAIR COMPETITION**

171. Etsy fully incorporates its responses to Paragraphs 1 through 170 as if fully set forth herein.

172. Etsy denies the allegations in Paragraph 172.

173. Etsy denies the allegations in Paragraph 173.

174. Etsy denies the allegations in Paragraph 174.

175. Etsy denies the allegations in Paragraph 175.

**FOURTH CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
(against Defendants Zazzle, Inc., Etsy, Inc., and Fastly, Inc. only)**

176. Etsy fully incorporates its responses to Paragraphs 1 through 175 as if fully set forth herein.

177. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 177 and therefore denies such allegations.

178. Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 178 and therefore denies such allegations.

179. Etsy denies the allegations in Paragraph 179 with respect to Etsy. With respect to Plaintiff's allegations concerning Zazzle and Fastly, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 179, and therefore denies such allegations.

180. Etsy denies the allegations in Paragraph 180 with respect to Etsy. With respect to Plaintiff's allegations concerning Zazzle and Fastly, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 181, and therefore denies such allegations.

181. Etsy denies the allegations in Paragraph 181 with respect to Etsy. With respect to Plaintiff's allegations concerning Zazzle and Fastly, Etsy is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 181, and therefore denies such allegations.

182. Etsy denies the allegations in Paragraph 182 with respect to Etsy. With respect to Plaintiff's allegations concerning Zazzle and Fastly, Etsy is without knowledge or information

sufficient to form a belief as to the truth of the allegations in Paragraph 182, and therefore denies such allegations.

**FIFTH CAUSE OF ACTION
UNJUST ENRICHMENT**

183. Etsy fully incorporates its responses to Paragraphs 1 through 182 as if fully set forth herein.

184. Etsy denies the allegations in Paragraph 184.

185. Etsy denies the allegations in Paragraph 185.

PRAYER FOR RELIEF

Etsy denies that Plaintiff is entitled to any of the relief sought in the Complaint or to any relief whatsoever.

DEMAND FOR JURY TRIAL

Etsy admits that Plaintiff demands a jury trial.

AFFIRMATIVE AND SPECIAL DEFENSES

By alleging the Affirmative and Special Defenses set forth below, Etsy does not agree or concede that it bears the burden of proof or the burden of persuasion on any of these issues, either in whole or in part.

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff's alleged trademarks are invalid and unenforceable, at least because they are geographically descriptive and have not acquired secondary meaning.

THIRD AFFIRMATIVE DEFENSE

Plaintiff does not own a federal trademark registration for the alleged LOWER EAST SIDE trademark and lacks standing to bring a claim for infringement of the mark under 15 U.S.C. § 1114.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has abandoned his alleged trademarks.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has been using and is attempting to further use his alleged trademarks in violation of antitrust laws, *inter alia*, by seeking an improper and unconstitutional monopoly on the use of the phrases “lower east side” and “LES NYC.”

SIXTH AFFIRMATIVE DEFENSE

Plaintiff’s claims against Etsy are barred in whole or in part by one or more of the equitable doctrines of laches, estoppel, waiver, or unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the doctrine of fair use.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff’s claims are barred by the doctrine of preemption.

NINTH AFFIRMATIVE DEFENSE

Plaintiff’s copyright claim is barred by the Digital Millennium Copyright Act.

TENTH AFFIRMATIVE DEFENSE

Plaintiff cannot establish actual economic harm.

ELEVENTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff suffered any damage or injury, which Etsy expressly denies, Plaintiff failed to take necessary steps to mitigate the damage or injury sustained.

TWELFTH AFFIRMATIVE DEFENSE

Etsy has not infringed and does not infringe any valid, enforceable trademark of Plaintiff.

THIRTEENTH AFFIRMATIVE DEFENSE

Etsy has not engaged in any unfair competition or false designation of origin.

FOURTEENTH AFFIRMATIVE DEFENSE

Etsy has not infringed and does not infringe any valid, enforceable copyright of Plaintiff.

FIFTEENTH AFFIRMATIVE DEFENSE

Etsy has not committed any acts resulting in unjust enrichment against Plaintiff.

RESERVATION OF ADDITIONAL DEFENSES

Etsy reserves any and all additional defenses available under Titles 15 and 17 of the United States Code, the rules, regulations, or laws related thereto, the Federal Rules of Civil Procedure, the Rules of this Court, and/or otherwise in law or equity, now existing or later arising, as may be discovered.

PRAYER FOR RELIEF

WHEREFORE, Etsy requests entry of judgment in its favor against Plaintiff as follows:

- A. Dismiss Plaintiff's Complaint in its entirety, with prejudice;
- B. Enter judgment in favor of Etsy against Plaintiff;
- C. Enter a judgment and declaration that Etsy has not infringed Plaintiff's alleged trademarks under the Lanham Act;
- D. Enter a judgment and declaration that Etsy has not committed any acts of unfair competition and false designation of origin under the Lanham Act;

E. Enter a judgment and declaration that Etsy has not infringed Plaintiff's alleged trademarks under the laws of the state of New York;

F. Enter a judgment and declaration that Etsy has not committed any acts of unfair competition under the laws of the state of New York;

G. Enter a judgment and declaration that Etsy has not infringed Plaintiff's copyrighted works;

H. Enter a judgment and declaration that Etsy has not committed any acts resulting in unjust enrichment under the common law of the state of New York;

I. Enter a judgment and declaration that Plaintiff's alleged trademarks are invalid;

J. Enter a judgment and declaration that no damages, profits, attorneys' fees, costs, pre- or post-judgment interest, or any other compensation or damages are due or owed by Etsy to Plaintiff for any of the acts alleged in the Complaint;

K. Deny Plaintiff's request for injunctive relief;

L. Award to Etsy its attorneys' fees, expenses, and costs incurred in this action, pursuant to 15 U.S.C. § 1117(a) and 17 U.S.C. § 505; and

M. Award to Etsy such other and further relief as the Court may deem just.

JURY DEMAND

Etsy demands a trial by jury on all issues so triable.

Dated: February 5, 2018

Respectfully submitted,

FISH & RICHARDSON P.C.

By: /s/ Kristen A. McCallion

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on February 5, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system, and to plaintiff pro se by email and mail as follows:

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